



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Doc. No. AMS-FV-13-0065; FV13-993-1 FR]

Dried Prunes Produced in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Prune Marketing Committee (Committee) for the 2013-14 and subsequent crop years from \$0.22 to \$0.28 per ton of salable dried prunes handled. The Committee locally administers the marketing order, which regulates the handling of dried prunes grown in California. Assessments upon dried prune handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or

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Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 110 and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866 and 13563.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried

prunes beginning on August 1, 2013, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2013-14 and subsequent crop years from \$0.22 to \$0.28 per ton of salable dried prunes handled.

The California dried prune marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The

members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area. Therefore, they are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2011-12 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 25, 2013, and unanimously recommended 2013-14 expenditures of \$43,791 and an assessment rate of \$0.28 per ton of salable dried prunes. The assessment rate of \$0.28 is \$0.06 higher than the rate currently in effect, even though last year's budgeted expenditures of \$44,968 were higher than those recommended for this year.

The Committee unanimously recommended the higher assessment rate because the production estimate of 105,000 tons of salable dried prunes for the 2013-14 crop year is

substantially lower than the 137,285 tons produced during the 2012-13 crop year. Using the proposed assessment rate, assessment income for the 2013-14 crop year will be \$29,400. Assessment income, combined with funds carried over from the prior crop year and interest income, is expected to be adequate to cover budgeted expenses for the year.

The major expenditures recommended by the Committee for the 2013-14 year include \$26,944 for salaries, \$9,538 for operating expenses, and \$7,308 for contingencies. Budgeted expenses for these items in 2012-13 were \$22,997, \$9,970, and \$12,001, respectively.

The assessment rate recommended by the Committee was derived by considering the funds needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds in the amount of \$14,384 carried forward into the 2013-14 crop year, and estimated interest income in the amount of \$7. As mentioned earlier, dried prune production for the year is estimated at 105,000 salable tons, which should provide \$29,400 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended,

or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA.

Committee meetings are open to the public, and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2013-14 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small businesses. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 800 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

Committee data indicates that about 64 percent of the handlers ship less than \$7,000,000 worth of dried prunes. Dividing the average prune crop value for 2012 reported by the National Agricultural Statistics Service (NASS) of \$172,500,000 by the number of producers (800) yields an average annual producer revenue estimate of about \$215,625. Based on the foregoing, the majority of handlers and producers of dried prunes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2013-14

and subsequent crop years from \$0.22 to \$0.28 per ton of salable dried prunes. The Committee unanimously recommended 2013-14 expenditures of \$43,791 and an assessment rate of \$0.28 per ton of salable dried prunes. The assessment rate of \$0.28 is \$0.06 higher than the 2012-13 rate. The quantity of assessable dried prunes for the 2013-14 crop year is estimated at 105,000 tons. Thus, the \$0.28 rate should provide \$29,400 in assessment income, and when combined with carry-in funds and interest income, should be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2013-14 year include \$26,944 for salaries, \$9,538 for operating expenses, and \$7,308 for contingencies. Budgeted expenses for these items in 2012-13 were \$22,997, \$9,970, and \$12,001, respectively.

The Committee unanimously recommended the higher assessment rate because the production estimate of 105,000 tons of salable dried prunes for this year is substantially lower than the 137,285 tons produced last year. At the current assessment rate, the anticipated crop would not generate sufficient revenue to meet the 2013-14 budgeted expenses.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources,

including the Committee's Executive Subcommittee. The assessment rate of \$0.28 per ton of salable dried prunes was recommended after considering various factors, including the amount of handler assessment revenue needed to meet anticipated expenses, the estimated quantity of salable tons of California dried prunes for the 2013-14 crop year, excess funds carried forward into the 2013-14 crop year, and estimated interest income. An alternative to this action would be to continue with the \$0.22 per ton assessment rate. However, an assessment rate of \$0.28 per ton of salable dried prunes, along with excess funds from the 2012-13 crop year, is needed to provide sufficient income to fund the Committee's operations.

A review of historical crop and price information, as well as preliminary information pertaining to the 2013-14 season, indicates that the producer price for salable dried prunes for the 2013-14 season could average about \$1,300 per ton. Utilizing this estimate and the proposed assessment rate of \$0.28, estimated assessment revenue as a percentage of total estimated producer revenue should be about 0.02 percent for the 2013-14 season ($\$0.28 \div \$1,300$ per ton).

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs

on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 25, 2013, meeting was a public meeting. All entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the

initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on October 23, 2013 (78 FR 63128). Copies of the proposed rule were also mailed or sent via facsimile to all dried prune handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending November 7, 2013, was provided for interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposal. The commenter expressed disagreement with the proposed increase in the assessment rate and that the increase in the assessment should be reconsidered. The commenter also asserted that the proposal failed to explain how the additional cost coupled with the substantial decrease in production of dried prunes for the

2013-14 year would harm handlers and producers. We disagree.

The proposal stated that the members of the Committee that unanimously recommended the increased assessment rate are producers and handlers of California dried prunes, and represent those who are affected by the assessment rate. They are familiar with the Committee's needs and with the costs for goods and services in their local area. The assessment rate was formulated and the increase was thoroughly discussed in a public meeting. The Committee members and other interested parties did not believe that the increase in the assessment rate, as proposed, would harm either handlers or producers. Further, the increase to \$0.28 is approximately .022% of the producer price for salable dried prunes, which could average about \$1,300 per ton for the 2013-14 season. The percent of producer price for the last four years was .017%, .023%, .012%, and .020%, respectively. Therefore, AMS has concluded that the proposed assessment rate, as proposed, is reasonable and in line with previous years' rates. Further, the increase is the minimal amount necessary to fund basic Committee operations. Accordingly, no change to the assessment rate as proposed is made in the final rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
<http://www.ams.usda.gov/AMSV1.0/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2013-14 crop year began on August 1, 2013, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such crop year; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this rule, which was unanimously recommended by the Committee at a public meeting and is similar to other

assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993 - DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 2013, an assessment rate of \$0.28 per ton of salable dried prunes is established for California dried prunes.

Dated: February 25, 2014

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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